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August 3, 1999

**BY FACSIMILE****CONFIDENTIAL  
FOR SETTLEMENT PURPOSES ONLY**Sherry Estes, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region V  
77 West Jackson Boulevard (C-29A)  
Chicago, IL 60604Re: Skinner Landfill

Dear Sherry:

This letter responds to your request for information to support a determination that plaintiffs in the Skinner Landfill litigation will not be "overcompensated" if they are provided 6% of the amounts received as a result of the so-called "first-round" de minimis settlements entered on the basis of the preliminary allocation report prepared by John Barkett.

As we have discussed, the Skinner Work Group negotiating the remedial action consent decree has not yet finalized an allocation agreement among themselves. However, certain basic principles of the allocation of past and future costs have been agreed to. Importantly, the pending agreement treats past and future costs separately. The allocation as to past costs is wholly unaffected by the allocation of future costs, e.g., plaintiffs will not receive "credit" for their past costs towards future response costs. Consequently, to the extent there is a special Skinner account that provides for the payment of monies to the Skinner Work Group for future response costs, those monies will benefit each Work Group member according to the proportion of future site costs each member has agreed to bear under the Group's agreement. Those funds will have no effect on reimbursement of plaintiffs' past costs.

With respect to plaintiffs' past costs, the Group has decided to allocate all past costs incurred by plaintiffs. As such, the plaintiffs would be reimbursed for those costs they incurred in excess of the percentage shares of those costs plaintiffs have agreed to pay under the agreement. However, in order to reach an allocation agreement with the rest of the Work Group, plaintiffs agreed to pick up more than their proportionate share of the past costs that Mr. Barkett attributed to them in his final report. (In other words, the Group took the Barkett shares of the

BEVERIDGE &amp; DIAMOND, P. C.

Sherry Estes, Esq.

August 3, 1999

Page 2

Group, decreased the shares of one or more Group members, increased the shares of the rest (including the plaintiffs), and then normalized the resulting shares to 100% to account for all past costs.) Accordingly, to the extent EPA views that report as the basis for determining plaintiffs' appropriate recovery of past costs, plaintiffs are being undercompensated for their past costs.

Moreover, plaintiffs are not being reimbursed by the other Work Group members (or through any other settlements) for the interest that has accrued on plaintiffs' past costs. That interest, to which plaintiffs are entitled under Section 107 of CERCLA, amounts to approximately \$188,300. The methodology for that calculation, which treats interest as beginning to accrue on the date of plaintiffs' complaint, is set forth in the enclosure to this letter.

Even if EPA were to accept all the de minimis settlement offers that were extended on the basis of the "first round" settlements, six percent of the total amount collected would be less than \$30,000. Moreover, as you know, EPA has asked the plaintiffs to forego collection of certain of those settlements (e.g., those entered with de minimis parties), which, if agreed to, would lower the dollar value of the six percent. Consequently, even if plaintiffs receive that six percent, they will not be "overcompensated" for the past costs and interest to which they are entitled.

Finally, I would note that the Work Group has agreed that no additional sums recovered from other parties would go to plaintiffs' past costs. Instead, any such sums that would go to the benefit of Work Group members would be applied to reduce their future cost obligations.

Sincerely yours,



Karl Bourdeau

On behalf of the Plaintiffs

KSB:trs

Enclosure

**PRIVILEGED & CONFIDENTIAL  
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PROTECTED FROM DISCLOSURE  
UNDER F.R.E. 408**

**CALCULATION OF PLAINTIFFS' INTEREST CLAIM**

First, the Plaintiffs' collective share of site costs was derived from Final Report data. This share was then augmented to account for the Plaintiffs' pro rata share of the orphan, resulting in Plaintiffs' total share.

That percentage was removed from the amount expended by Plaintiffs' for recoverable costs prior to the filing of the complaint on March 28, 1997. The resulting figure was then multiplied by the interest rate specified by EPA for FY97 Superfund debts (5.69%). The figure was then adjusted to reflect the fact that interest accrued for only a portion of FY97, from March 28, 1997, through September 30, 1997. Interest on additional recoverable costs expended during FY97 was calculated in the same fashion. The Plaintiffs' total share of those costs was subtracted. The resulting figure was multiplied by the interest rate supplied by EPA. The figure was then further adjusted to reflect the fact that interest accrued on the amount for only a portion of the fiscal year.

For FY98, the base amount included all recoverable costs expended by Plaintiffs in or prior to FY97 (less Plaintiffs' total share of those costs), and FY97 interest. This base amount was multiplied by the interest rate provided by EPA for FY98 (5.61%). The interest on additional recoverable costs expended by Plaintiffs during FY98 was calculated as described above for FY97. For each individual payment of recoverable costs, the Plaintiffs' share of the amount was subtracted, and the resulting figure was then multiplied by the interest rate provided by EPA for FY98. The figure was then further adjusted to include interest only for the portion of the fiscal year that the interest accrued. The interest amounts for all of these individual transactions were summed, resulting in a total interest figure for FY98.

For FY99, the base amount included the FY98 base amount, plus recoverable costs expended in FY98 (less Plaintiffs' total share of those costs), plus FY98 interest. Because EPA has not yet released an interest rate for FY99, an estimated rate (5.6%) was used, based on previous years' interest rates. Interest was calculated for FY99 through June 1, 1999, by taking the base amount, multiplying it by the estimated interest rate, and then adjusting it to account for the fact that interest would only have accrued for a portion of FY99.

The total amount of the interest claim was calculated by adding the interest amounts for FY97, FY98, and FY99.